

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B6

FILE:

WAC 03 063 56593

Office: CALIFORNIA SERVICE CENTER

Date:

DEC 03 2004

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Sikh temple. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a priest. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition, or that the beneficiary's position qualifies as a religious occupation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on December 18, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest throughout the two years immediately prior to that date.

Dharm Singh, president of the petitioning temple, states that the beneficiary "has been serving as a full-time Sikh priest and hymn player at our Temple since November 2000. . . . Between November 2000 and March 2001, [the beneficiary] served as a full-time volunteer priest. Since April 2001, [the beneficiary] has been serving at our temple as a full-time, salaried priest. Our temple has provided free room and board for his service since November 2000." Dharm Singh indicates that the beneficiary's salary is \$450 per month, in addition to room and board "valued at approximately \$750 per month."

The director instructed the petitioner to submit additional evidence that the beneficiary worked as claimed. The director stated, "[i]deally, this evidence should come in a way that shows monetary payment. . . . However, you may also show payment through other forms of remuneration." Because the petitioner claims to have paid the beneficiary a salary since April 2001, the director requested documentation of those payments.

In response, the petitioner has submitted a September 2003 affidavit from Sukhraj Singh Sandhu, who asserts that "for [the] last 3 years, [the beneficiary has been] serving as priest at" the petitioning temple. The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

A single affidavit that does not explain, much less overcome, the unavailability of either primary or secondary evidence, cannot suffice under the regulation cited.

The petitioner has submitted copies of its Internal Revenue Service (IRS) Form 990 returns, essentially the equivalent of income tax returns for tax-exempt organizations. The 2001 return indicates \$27,500 in wages and salaries paid, but does not identify the paid employees. The 2002 return reports no salaries paid at all. The petitioner submits copies of Forms 1099-MISC distributed to seven individuals who received "nonemployee compensation" from the petitioner in 2002. The beneficiary is not one of these seven named individuals.

The petitioner submits copies of bank statements dated 2001 and 2002. The bank statements show the beneficiary's name and the address of the petitioning temple. The statements reflect numerous deposits, but do not identify the source of the deposited funds. In most months, the deposits significantly exceed the beneficiary's stated \$450 wage. The petitioner has submitted statements covering 17 months between April 2001 and June 2003. Regular \$450 monthly payments from the petitioner would account for \$7,650 in deposits during those months. The total deposited, however, is \$36,402.14. In September 2002 alone, the beneficiary deposited \$8,163 into his account. This amount is equivalent to a year and a half worth of \$450 salary payments.

Although the director had instructed the petitioner to document the sources of the beneficiary's financial support, there is no explanation as to the source or sources of the deposited funds in excess of \$450 per month. Only one deposit is exactly \$450, and there is no evidence to show that this deposit, or any other deposit, came from the petitioner. Even if we infer, from the address shown on the bank statements, that the beneficiary resided at the temple as of the dates on those statements, the petitioner's submission includes nothing at all to place the beneficiary at the temple before April 2001.

The petitioner submits copies of cancelled checks paid to the beneficiary, but the earliest check is dated April 28, 2003. The checks do not document payments to the beneficiary during the 2000-2002 qualifying period.

The director denied the petition, stating "the evidence is insufficient to establish that the beneficiary has been working continuously in the same type of work as the proffered position for the two-year period immediately preceding the filing of the petition." One argument in support of this finding was the director's assertion that volunteer work is not qualifying employment experience.

On appeal, counsel argues that volunteer work does constitute qualifying work experience. We do not agree that wholly uncompensated volunteer work qualifies, but in this instance, the petitioner claims to have provided the beneficiary with room and board since before the qualifying period began. According to case law, religious work performed in exchange for room and board constitutes "employment" for immigration purposes. *See Matter of Hall*, 18 I&N Dec. 203 (BIA 1982).

That being said, the burden remains on the petitioner to demonstrate that it provided room and board as claimed. The petitioner has claimed to have provided the beneficiary with room and board since November 2000, and with a salary since April 2001, but the available documentary evidence offers no support for these assertions. The petitioner's Forms 990 and related IRS documents do not reflect the beneficiary's salary payments. The beneficiary's bank statements show substantial deposits during the qualifying period, but there is no evidence that the petitioner was the source of the deposited funds. The beneficiary's apparent receipt of sums that substantially exceed the purported salary raises more questions than it answers. Given these issues, the coupling of the beneficiary's name and the petitioner's address on the bank statements is not persuasive evidence that the beneficiary lived and worked at the petitioning temple.

Upon consideration, we cannot find that the petitioner has met its burden to establish that the beneficiary worked continuously at the petitioning temple from December 2000 to December 2002.

The other issue under consideration is whether the petitioner seeks to employ the beneficiary in a qualifying position. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to submit evidence showing that the beneficiary has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties.

states that the beneficiary "is duly authorized to conduct religious worship and perform other duties . . . including wedding, funerals, and baptism ceremonies" indicates that the beneficiary is one of six priests who "perform morning and evening prayers, and perform kirtan (holy hymn songs) on a daily basis. All of our priests also recite Akhand Path Sahib . . . from Friday to Sunday and perform additional services for special occasions, such as wedding, funeral, and baptism ceremonies."

indicates that the beneficiary "completed his three-year training for a Sikh priesthood at Mehta Chowk, India . . . in 1992." A letter from Thakur Singh corroborates this information, and indicates that the beneficiary "was bestowed priesthood on April 26", 1992."

The director requested "a detailed description of the duties the beneficiary will be performing for the religious organization," and "evidence that the individual has authorization to conduct religious worship and perform other services usually performed by members of the clergy." In response, the petitioner has submitted a copy of a certificate from Gurmat University, indicating that the beneficiary studied "Perfect Recitation of Gurbani" and "Study of Ragas" from 1989 to 1992. The petitioner also submits copies of previously submitted letters that list the beneficiary's duties.

The director determined that "[t]he beneficiary's duties do not relate to a traditional religious function," and that the petitioner had failed to "submit any evidence of qualification necessary to prepare an individual for the offered position." On appeal, counsel argues that the petitioner has amply demonstrated that the petitioner has offered the beneficiary a qualifying position.

The director's denial relies heavily on discussion of "traditional religious functions" and other elements of the regulatory definition of a religious occupation. The record, however, clearly indicates that the petitioner seeks to employ the beneficiary not in a religious occupation, but as a minister. The duties described are ministerial, involving rites such as weddings, funerals, and child dedications, in addition to regular worship services. The petitioner had also explained the beneficiary's training and credentials. The director did not explain why this evidence was inadequate, except in the context of inapplicable regulations regarding religious occupations (as distinct from the vocation of a minister).

For the above reasons, we withdraw this finding by the director, and find that the petitioner's job offer, as described, conforms to the regulatory requirements of a ministerial position. The director's other finding, as explained above, still stands regarding the beneficiary's required past experience.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.